IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17776 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAKHIBEN W/O. RAMANBHAI BUDHABHAI RATHODYA

Versus

POLICE COMMISSIONER VADODARA

Appearance:

1. Special Civil Application No. 17776 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1,3

RULE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 05/12/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four prohibition offences were registered against him before Northern Division Police Station between 26/05/02 and 24/10/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against him saying that on account of the activities of the petitioner an atmosphere of fear and apprehension was generated.

3. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained. Accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that few offences were registered, it could not be said that the activities of the petitioner were likely to create a threat to public order. It has also been contended that looking to the statements of the witnesses, it could not be said that the petitioner's activities were prejudicial to the maintenance of public order. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has argued that simply because a few offences under the Bombay Prohibition Act, 1949, were registered against the petitioner, it could not be said that his activities were prejudicial to the maintenance of public order. In this connection, the learned advocate for the petitioner has relied upon a decision in the case of Piyush Kantilal Mehta V/s. Commissioner of Police, Ahmedabad City reported in A.I.R. 1989 SC 491. Para 17 and 18 of the decision are relevant. They are reproduced for ready

reference as follows;

Para 17 : "Does the expression 'public order' take in every kind of infraction of order or only some categories thereof? It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individual and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

Para 18 : In the instant case, the detaining authority, in our opinion, has failed to substantiate that the alleged antisocial activities of the petitioner adversely affect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of S.2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in subsection (4) of S.3 of the Act, his activities as a bootlegger affect adversely

> or are likely to affect adversely the maintenance of public order. We have carefully considered the offences alleged against the petitioner in the order of detention and also the allegations made by the witnesses and, in our opinion, these offences or the allegations cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question given rise to the question of maintenance of public order. The order of detention cannot, therefore, be upheld."

7. On going through the aforesaid decision, it is amply clear that the principle enunciated in the aforesaid decision will squarely apply to the facts of the case on hand. In that view of the matter, it would be difficult to say as to how the public order was adversely affected or was likely to be adversely affected by the activities of the petitioner.

8. So far the statements of the witnesses are concerned, the learned advocate for the petitioner has contended that the last registered offence was dated 24/10/03 and the witnesses have referred the incident on 02/11/02 and 22/10/03. The order of detention is dated 05/12/03. On the strength of the aforesaid factual dates, the learned advocate for the petitioner has contended that the order of detention has been passed after a long lapse of time. It is required to be considered that so far the last registered offence is concerned, it was registered on 22/10/03. Therefore, the order of detention has been passed after a lapse of about one month from the date of the last registered offence.

9. It is well settled that an order of detention is required to be passed immediately. The basic object for passing an order of detention is to see that the person is immediately detained, in order to prevent him from continuing his illegal activities. If the order is not immediately passed, then it would mean that there was no immediate need to detain the person. In the present case, we find that there was a lapse of about 35 to 40 days in between the date of occurence of the event and the date of the order of detention. There is no explanation about the delay caused in passing the order of detention. In that view of the matter, when the immediate need to detain the petitioner is not found on record, then the order of detention cannot be sustained in the eye of law.

10. For the foregoing reason, this petition is

allowed. The impugned order of detention dated 05/12/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Lakhiben W/o. Ramanbahi Budhabhai Rathodiya, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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